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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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U.S. DISTRICT COURT

UNITED STATES OF AMERICA and FRANK  
J. KELLEY, ATTORNEY GENERAL FOR THE  
STATE OF MICHIGAN, EX REL MICHIGAN  
NATURAL RESOURCES COMMISSION, and  
DIRECTOR OF THE MICHIGAN DEPARTMENT  
OF NATURAL RESOURCES,

Plaintiffs,

Civil Action No. 87-70992  
Hon. John Feikens

v.

WAYNE COUNTY, MICHIGAN; CITY OF  
ALLEN PARK; CITY OF BELLEVILLE;  
TOWNSHIP OF BROWNSTOWN; CITY OF  
DEARBORN HEIGHTS; CITY OF ECORSE;  
CITY OF LINCOLN PARK; CITY OF RIVER  
ROUGE; CITY OF RIVERVIEW; CITY OF  
ROMULUS; CITY OF SOUTHGATE; CITY OF  
TAYLOR; TOWNSHIP OF VAN BUREN;  
CITY OF WYANDOTTE; SOUTHGATE-  
WYANDOTTE RELIEF DRAIN DRAINAGE  
DISTRICT; and ECORSE CREEK POLLUTION  
ABATEMENT DRAIN, NO. 1 DRAINAGE DISTRICT,

FILED  
OCT 16, 3 44 PM '98

Defendants.

SECOND AMENDMENT TO THE MAY 24, 1994 CONSENT DECREE

WHEREAS, Plaintiffs, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), and Frank J. Kelley, the Attorney General for the State of Michigan, ex rel, Michigan Natural Resources Commission, and Director of the Michigan Department of Natural Resources, now known as the Department of Environmental Quality ("DEQ"),<sup>1</sup> filed the Complaint herein on March 18, 1987, against Defendant Wayne County,

<sup>1</sup> Since the initiation of this action, the responsibilities of the Michigan Natural Resources Commission and the Director of the Michigan Department of Natural Resources

324

Michigan (the "County") and, on October 26, 1988, a First Amended Complaint,<sup>2</sup> which added Defendants the Downriver Communities and the Drainage Districts;

WHEREAS, on May 24, 1994, upon consent of the parties, a Consent Decree ("the May 24, 1994 Consent Decree") was entered, resolving the claims asserted in the First Amended Complaint;

WHEREAS, because of new information and changes of circumstance, this Court has determined that an amendment to the May 24, 1994 Consent Decree and a First Amended Consent Decree entered by the Court on March 3, 1998, is necessary, as set forth herein.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

#### **DEFINITIONS**

All definitions contained in the May 24, 1994 Consent Decree, as amended by the March 3, 1998 First Amendment to the Consent Decree, are hereby incorporated into this Second Amendment to the May 24, 1994 Consent Decree.

#### **AMENDED AND RESTATED SECTIONS**

The May 24, 1994 Consent Decree, as amended by the March 3, 1998 First Amendment to the Consent Decree shall remain in full force and effect in accordance with its terms, except that the paragraphs or subparagraphs identified below are amended and restated as follows:

---

have been changed by Gubernatorial Executive order and are now vested in the Director of the Michigan Department of Environmental Quality.

<sup>2</sup> The Michigan Water Resources Act has been amended and is now known as Part 31, of the Natural Resources and Environmental Protection Act ("NREPA"), entitled Water Resources Protection MCLA 324.3101 - 324.3119.

IV. COMPLIANCE PROGRAM.

\* \* \* \*

4. Completion of all Planning, Design, Construction, and Performance Activities Specified in Attachment A. The facilities recommended in the multi-volume, project plan dated May 1, 1993, titled "Wayne County Downriver Collection System," and subsequent updates for fiscal years 1995, 1996, 1997 and 1998, in combination with Riverview's separately-submitted plan, entitled "Project Plan for Sanitary Sewer Improvements, City of Riverview" (collectively known as the "Project Plan"), are deemed submitted to Plaintiffs. The May 1, 1993 Project Plan, the City of Riverview's separately-submitted plan, and the updates for fiscal years 1995, 1996, 1997, and 1998 are hereby approved by Plaintiffs. Defendants shall, as set forth herein, take all measures necessary to assure compliance with the Project Plan and this Consent Decree. Defendants acknowledge that this approval does not constitute approval for State Revolving Fund ("SRF") loan assistance under Part 53 of NREPA, MCLA 324.5301 - 324.5316, formerly known as 1988 Public Act 317, or approval of plans and specifications under Part 41 of NREPA, MCLA 324.4101 - 324.4111, formerly known as 1913 Public Act 98, and Defendants acknowledge that this approval, like all others under the May 24, 1994 Consent Decree and this Amended Consent Decree, is governed by paragraph no. 51 herein. Defendants shall commence and complete all the construction and project completion activities -- including but not limited to associated planning, design, rehabilitation, contracting, construction, and performance certification -- listed in Attachment A hereto (a/k/a "Wayne County Downriver Collection and Treatment System: Amended Project Schedule; March, 1997") and, except as specified differently in the text of this Decree, Defendants shall commence and complete

all the activities listed in Attachment A by the deadlines set in Attachment A. In some instances items listed in Attachment A are described in more detail in the Consent Decree. In those instances, Defendants shall complete all activities by the deadlines established in this Decree. If in any instance a deadline imposed in the text of this Decree conflicts with a deadline established by Attachment A, the date set in the text of this Decree shall control.

\*\*\*\*

6. Upgrade of Wayne County--Wyandotte Treatment Plant ("WWTP")

\* \* \* \*

- A. (iii) Completion of installation of WWTP Dechlorination Facilities by June 1, 1996, and subsequent compliance with a TRC limit of 0.5 mg/l and with the period of disinfection specified in the final NPDES permit until the commencement of construction of the ultraviolet radiation disinfection system.
- (iv) Installation of an ultraviolet radiation disinfection system in accordance with the Project Plan to meet final NPDES limits by April 1, 2000.

6.1 Interim Measures To Minimize Total Residual Chlorine During Construction

A. Wayne County shall, on or before October 1, 1998, submit to Plaintiffs for their approval a plan (the "Interim Chlorine Control Plan") to minimize the chlorine in the Plant's effluent during construction of the ultraviolet disinfection system consistent with Rule 299.2943 promulgated under Part 41 of the Michigan Natural Resources and Environmental Protection Act, 1994 P.A. 451, as amended. The plan shall include, but not be limited to, the following:

- (i) An investigation of the potential impacts of reduction of the plant treatment performance level on downstream potable water intakes under a seasonal disinfection scenario and a continuous disinfection scenario;
- (ii) A schedule setting forth specific milestones for implementing the most appropriate alternative to protect the downstream potable water intakes from adverse public health impacts.
- (iii) A process for notifying, within 10 days of Plaintiffs' approval of the Interim Chlorine Control Plan, all downstream Detroit River potable water-intake facilities, including Canadian facilities, of the proposed course of action and the potential impact on potable water intakes.
- (iv) A clearly defined construction period and an explanation why performance of the plant cannot be met during the construction period.
- (v) Identification of all reasonable efforts that will be undertaken by the county to provide the best interim operation of the WWTP possible.

B. If Wayne County can demonstrate that seasonal disinfection is the most effective alternative, then the Michigan Department of Environmental Quality, Surface Water Quality Division may, in its discretion, allow the county to implement seasonal disinfection consistent with the approved plan submitted above.

C. Upon approval by Plaintiffs, Defendants shall implement the Interim Chlorine Control Plan in accordance with the schedules and other provisions therein.

D. During the construction of the ultraviolet disinfection system, Defendants shall include in their monthly report to MDEQ a narrative description of the steps taken to implement the approved Interim Chlorine Control Plan; a description of any impediments to, or any problems with, the Interim Chlorine Control Plan and steps taken, or to be taken, to correct such impediments or problems and measures to be taken to continue implementing the Interim chlorine Control Plan.

7. Regional Storage - Transport System

- (ii) Extension of Eureka Relief Sewer, in accordance with the Project Plan;

\* \* \* \*

17.1 Deadlines Related to WWTP's Obligation To Submit and To Implement the Interim

TRC Control Plan. If Defendants fail to meet the deadlines set forth below, Wayne County shall pay stipulated penalties as follows:

- A. If Defendants fail to complete installation of the ultraviolet radiation disinfection system in accordance with the Project Plan, stipulated penalties shall apply for each and every day beyond October 1, 2000, during which such failure to complete installation continues, as provided in Paragraph 17.C of the May 24, 1994 Consent Decree.
- B. If Defendants fail to submit to Plaintiffs a completed, substantially adequate Interim Chlorine Control Plan called for under Paragraph 6.1.A, stipulated penalties shall apply as follows for each day such document was submitted untimely or remains in a substantively inadequate state:


<u>Period of Failure to Comply</u>	<u>Penalty Per Day of Noncompliance</u>
1 <sup>st</sup> to 15 <sup>th</sup> day	\$1500 per day of violation
16 <sup>th</sup> to 30 <sup>th</sup> day	\$2500 per day of violation
After 30 days	\$4000 per day of violation

- C. If Defendants fail to submit to MDEQ the Interim Chlorine Control Plan monthly reports pursuant to Subparagraph 6.1.D or for failure to notify the downstream Detroit River, potable water intake facilities in accordance with Subparagraph 6.1.A(iii), stipulated penalties shall apply as follows for each day of delay in meeting such obligation as follows:

<u>Period of Delay</u>	<u>Penalty Per Day Delay</u>
1 <sup>st</sup> to 30 <sup>th</sup> day of delay	\$100 per day
31 <sup>th</sup> to 60 <sup>th</sup> day	\$150 per day
After 60 days	\$200 per day

\* \* \* \*

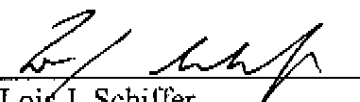
SO ORDERED THIS 16th DAY OF October 1998, AT DETROIT, MICHIGAN.

  
UNITED STATES DISTRICT JUDGE  
EASTERN DISTRICT OF MICHIGAN

United States, et al. v. Wayne County, et al., Civil No. 87-70992 (E.D. Mich.) Signature Page of the  
First Amendment to the May 24, 1994 Consent Decree

For the United States of America:

United States Department of Justice  
Environment & Natural Resources Division  
Washington, D.C.

  
Lois J. Schiffer  
Assistant Attorney General

Date: 9/23/98

United States Department of Justice  
Environmental & Natural Resources Division

  
Thomas Carroll  
Environmental Enforcement Section

United States, et al. v. Wayne County, et al., Civil No. 87-70992 (E.D. Mich.) Signature Page of the First Amendment to the May 24, 1994 Consent Decree

FRANK J. KELLEY, ATTORNEY GENERAL FOR  
THE STATE OF MICHIGAN, EX REL, MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY

By

 9/24/98  
John C. Scherbarth

Assistant Attorney General  
Natural Resources Division  
Knapp's Office Centre  
300 S. Washington, Suite 530  
Lansing, Michigan 48913  
Telephone: (517) 335-1488

SEYBURN, KAHN, GINN,  
BESS, DEITCH AND SERLIN  
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(313) 381-8671



United States, et al. v. Wayne County, et al., Civil No. 87-70992 (E.D. Mich.) Signature Page of the  
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For the Defendants:

County of Wayne

Edward H. McNamara

Date: 9-18-98

Edward H. McNamara  
Chief Executive Officer

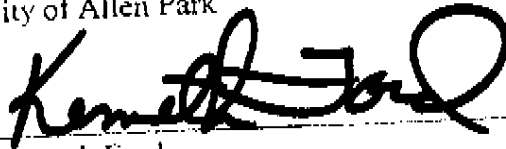
SEYBURN, KAHN, GINN,  
BESS, DEITCH AND SERLIN  
PROFESSIONAL CORPORATION  
660 WOODWARD AVENUE, SUITE 1600  
DETROIT, MICHIGAN 48226  
(313) 389-8671

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United States, et al. v. Wayne County, et al., Civil No. 87-70992 (E.D. Mich.) Signature Page of the  
First Amendment to the May 24, 1994 Consent Decree

City of Allen Park

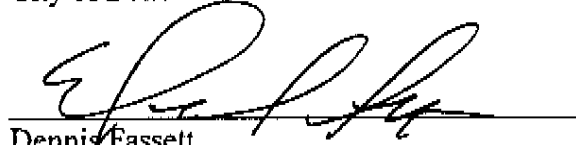


Kenneth Ford  
Mayor

STUBBINS, LAW OFFICES  
B.F.O. JULLIAN, A.B. 514 1119  
BOSTON, MASS 02108  
600 WOODWARD AVENUE, SUITE 1500  
DETROIT, MICHIGAN 48226  
733 551407

United States, et al. v. Wayne County, et al., Civil No. 87-70992 (E.D. Mich.) Signature Page of the  
First Amendment to the May 24, 1994 Consent Decree

City of Belleville

A handwritten signature in dark ink, appearing to read "Dennis Fassett", is written over a horizontal line.

Dennis Fassett

Mayor

SEYBURN, KAHN, CINN,  
BESS, DEITCH AND SERLIN  
PROFESSIONAL CORPORATION  
660 WOODWARD AVENUE, SUITE 1600  
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United States, et al. v. Wayne County, et al., Civil No. 87-70992 (E.D. Mich.) Signature Page of the  
First Amendment to the May 24, 1994 Consent Decree

Township of Brownstown



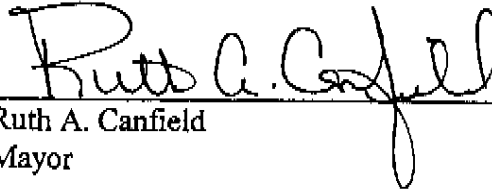
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W. Curt Boller  
Supervisor

SEYBURN, KAHN, GINN,  
BESS, DEITCH AND SERLIN  
PROFESSIONAL CORPORATION  
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United States, et al. v. Wayne County, et al., Civil No. 87-70992 (E.D. Mich.) Signature Page of the  
First Amendment to the May 24, 1994 Consent Decree

City of Dearborn Heights


  
Ruth A. Canfield  
Mayor

  
Joyce A. Robbins  
City Clerk

SEYBURN, KAHN, GINN,  
BESS, DEITCH AND SERLIN  
PROFESSIONAL CORPORATION  
860 WOODWARD AVENUE, SUITE 1600  
DETROIT, MICHIGAN 48226  
(313) 381-8671

United States, et al. v. Wayne County, et al., Civil No. 87-70992 (E.D. Mich.) Signature Page of the  
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City of Ecorse

  
James Tassis  
Mayor

SEYBURN, KAHN, GINN,  
BESS, DEITCH AND SERLIN  
PROFESSIONAL CORPORATION  
660 WOODWARD AVENUE, SUITE 1600  
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(313) 381-8671

United States, et al. v. Wayne County, et al., Civil No. 87-70992 (E.D. Mich.) Signature Page of the  
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City of Lincoln Park

A handwritten signature in cursive script, appearing to read "Frank Sall", written over a horizontal line.

Frank Sall  
Mayor

United States, et al. v. Wayne County, et al., Civil No. 87-70992 (E.D. Mich.) Signature Page of the  
First Amendment to the May 24, 1994 Consent Decree

~~CITY OF RIVER ROUGE~~

By: ~~Greg Joseph~~  
Greg Joseph

Its: Mayor

Charles E Manley

Charles E. Manley  
Clerk

SEYMOUR KAIN, GINN,  
DESS, DEITCH AND SERLIN  
REAL ESTATE BROKERS  
1001 EIGHTH AVENUE, SUITE 1001  
DENVER, COLORADO 80202


**[249] 101-8871**



United States, et al. v. Wayne County, et al., Civil No. 87-70992 (E.D. Mich.) Signature Page of the  
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City of Riverview

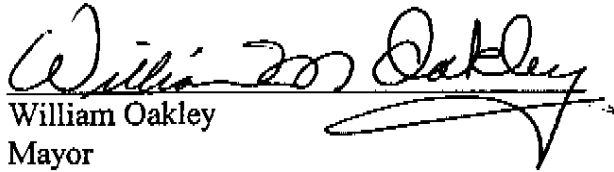
Tim Durand  
Mayor

A handwritten signature in black ink, appearing to read "Tim Durand", written over a horizontal line.

SEYBURN, HN, GINN,  
BESS, DEITCH, AND SERLIN  
PROFESSIONAL CORPORATION  
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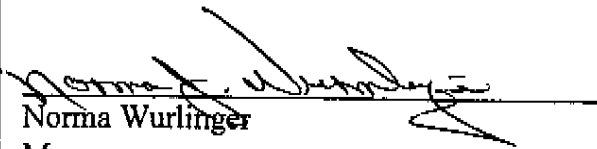
City of Romulus

  
William Oakley  
Mayor

SEYBURN, KAHN, CINN,  
BESS, DEITCH AND SERLIN  
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860 WOODWARD AVENUE, SUITE 1600  
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United States, et al. v. Wayne County, et al., Civil No. 87-70992 (E.D. Mich.) Signature Page of the  
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City of Southgate

  
Norma Wurlinger  
Mayor

SEYBURN, KAHN, GINN,  
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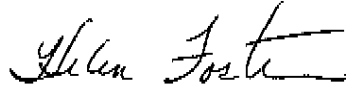
City of Taylor

  
\_\_\_\_\_  
Gregory Pitoniak  
Mayor

SEYBURN, KAHN, GINN,  
BESS, DEITCH AND SERLIN  
PROFESSIONAL CORPORATION  
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United States, et al. v. Wayne County, et al., Civil No. 87-70992 (E.D. Mich.) Signature Page of the  
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Van Buren Township

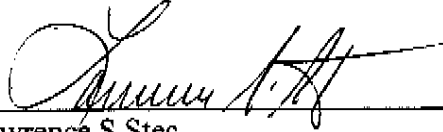


Helen Foster  
Supervisor

SEYBURN, KAHN, CINN,  
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United States, et al. v. Wayne County, et al., Civil No. 87-70992 (E.D. Mich.) Signature Page of the  
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City of Wyandotte

  
\_\_\_\_\_  
Lawrence S Stec  
Mayor

SEYBURN, KAHN, GINN,  
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United States, et al. v. Wayne County, et al., Civil No. 87-70992 (E.D. Mich.) Signature Page of the  
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Southgate/Wyandotte Relief Drain Drainage District

  
Patti J. Duha

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BESS, DEITCH AND SERLIN  
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United States, et al. v. Wayne County, et al., Civil No. 87-70992 (E.D. Mich.) Signature Page of the First Amendment to the May 24, 1994 Consent Decree

Ecorse Creek Pollution Abatement Drain, No. 1 Drainage District

  
Patti J. Duha

Approved at the Ecorse Creek Pollution Abatement Drain No. 1 Drainage Board Meeting held Tuesday, September 15, 1998 at 3:30 p.m. at the City of Southgate Hall.

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BRUCE S. KAHN<sup>1</sup>  
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BARRY R. BESS  
LAURENCE B. DEITCH  
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MARK S. COHN  
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HAROLD ROSEFF  
RICHARD C. BRUDER  
BETH S. GOTTHIELF  
LESLIE STEIN  
BARRY M. ROSENBAUM  
TOVA G. SHABAN  
ALAN M. STILLMAN  
FRED B. GREEN  
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BARRY R. POWERS  
CAROLYN SCHWARZ TISDALE<sup>3,4</sup>  
RONALD L. CORNELL, JR.<sup>5</sup>  
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JULIE C. CANNER  
MICHAEL N. SANTEUFEMIA  
JENNIFER S. FLACK<sup>6</sup>  
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JOSEPH W. LASH  
TAMMY L. BROWN  
ADAM D. ROSENBERG  
MARC E. SEYBURN  
KAREN H. RADER

1 ALSO MEMBER OF CALIFORNIA BAR  
2 ALSO MEMBER OF FLORIDA BAR  
3 ALSO MEMBER OF ILLINOIS BAR  
4 ALSO MEMBER OF NORTH CAROLINA BAR  
5 ALSO MEMBER OF CONNECTICUT BAR  
6 ALSO MEMBER OF NEW YORK BAR  
7 ALSO MEMBER OF MINNESOTA BAR

October 15, 1998

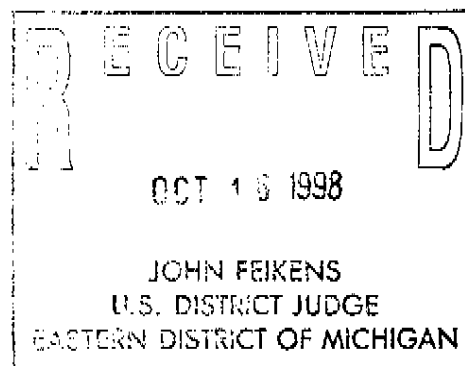
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TELEPHONE (248) 353-7620  
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bgotthelf@scyburn.com

Hon. John Feikens  
Eastern District of Michigan  
Theodore Levin United States Courthouse  
231 W. Lafayette Blvd., Room 851  
Detroit, Michigan 48226



**RE: *U.S., et al v Wayne County, et al*; Case No. 87-70992**  
**Second Amendment to the Consent Decree**  
**Request to Enter Second Amendment to the May 24, 1994 Consent Decree**

Hon. John Feikens:

The United States, the State of Michigan, plaintiffs herein, and Wayne County, one of the defendants herein, request that the Court enter the proposed Second Amendment to the May 24, 1994 Consent Decree (the "Second Amendment") under the Clean Water Act, 33 U.S.C. § 1251 et seq. The proposed Second Amendment was lodged with the Court on September 28, 1998. The United States published notice of the proposed Second Amendment in the Federal Register on October 1, 1998 Fed. Reg. Volume 63, Number 190, Pages 52763-52764, advising the public that comments would be accepted by the United States Department of Justice ("DOJ") until October 12, 1998. DOJ has received no comments on the Second Amendment. All of the parties to this action have consented to the entry by this Court of the Second Amendment.